New Belgian Capital Gains Tax: Key Features and Impact on M&A Transactions

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The new Belgian capital gains tax, also referred to as the "solidarity contribution", introduces a specific tax regime for capital gains on financial assets.[1]The rules apply as from 1 January 2026.

The reform is particularly relevant to entrepreneurs, investors and family shareholders considering a transfer of shares. In addition to the general residual category taxed at 10%, specific rules apply to substantial shareholdings and internal capital gains. In an M&A context, reinvestments, management buy-ins, family transfers and earn-out arrangements therefore require careful advance assessment.

1. Who falls within the scope of the tax?

The capital gains tax is intended to apply under both personal income tax and legal entities tax, but not under corporate income tax.[2] Its scope is therefore not limited to individuals. It may also cover non-profit organisations, foundations and unincorporated associations subject to legal entities tax. An exception applies to institutions officially recognised as eligible recipients of tax-deductible donations.[3]

For financial assets certified in accordance with Belgian certification legislation, the principle of tax transparency continues to apply. Accordingly, upon a sale, any capital gains tax is levied on the holders of the certificates rather than on the certification vehicle. The same principle applies to partnerships with respect to their underlying partners.

The new tax targets capital gains realised outside a professional activity and within the normal management of private assets. If a transaction falls outside the normal management of private assets, the existing miscellaneous income regime continues to apply, under which the capital gain may be taxed at 33%, increased by the additional municipal tax.[4] In practice, however, this is relatively rare.

Capital gains realised in the course of a professional activity are treated as professional income and are subject to progressive tax rates and social security contributions.

2. Three separate categories

The capital gains tax distinguishes between three categories:

- Internal capital gains;
- Capital gains on a substantial shareholding; and
- Residual category: capital gains on financial assets other than those falling within the two categories above.

The applicable category depends on the nature of the asset, the size of the participation and, for internal capital gains, the control relationship between the transferor and the acquiring entity.

[1] Law of April 6, 2026 introducing a tax on capital gains on financial assets, modifying articles 90 et seq., Belgian Income Tax Code 1992; administrative circular 2026/C/74 dated July 22, 2026

[2] For legal entities tax, see Article 220, 4°, Belgian Income Tax Code 1992.

[3] For example: Rode Kruis-Vlaanderen, Kom op tegen Kanker, UNICEF Belgium, Oxfam Belgium and Amnesty International Belgium.

[4] Article 90, first paragraph, 1°, Belgian Income Tax Code 1992.

3. Internal capital gains

3.1. Scope and tax rate

The internal capital gains regime applies to capital gains realised on a transfer of shares to an entity over which the transferor exercises direct or indirect control, either alone or together with family members up to and including the second degree.[5] These are the following persons:

- The spouse or legally cohabiting partner, descendants, ascendants, and collateral relatives up to and including the second degree (i.e. brothers and sisters) and

- The descendants, ascendants and collateral relatives up to and including the second degree of the spouse or legally cohabiting partner. The decisive factor is control over the acquiring entity.

An internal capital gain is taxable at 33%. No basic exemption applies, and the taxpayer must report the capital gain in the tax return. By contrast, a share buyback would fall within this regime only insofar as the buyback does not give rise to a taxable dividend.

The concept of control is interpreted by reference to Article 1:14 of the Belgian Code of Companies and Associations. It comprises the legal or factual power to exercise decisive influence over the appointment of the majority of directors or managers or over the direction of the company's policy. Legal control may arise from a majority of voting rights, the right to appoint or remove the majority of directors, provisions in the articles of association or contractual arrangements, or agreements with other shareholders resulting in joint control.

Control may therefore exist without a majority shareholding. Depending on their scope, veto rights or contractual arrangements requiring the transferor's consent for material policy decisions may result in joint control. Minority reinvestments should therefore be assessed not only by reference to the percentage held, but also in light of the shareholders' agreement and the relevant governance rights.

3.2. Reinvestment by the seller

A common M&A structure involves the seller transferring all shares to an acquisition vehicle and reinvesting part of the sale proceeds in that vehicle. If the seller becomes a co-investor in the acquisition vehicle and obtains control, for example through rights under a shareholders' agreement, the original transfer may qualify as an internal capital gain.

Particular attention is required where the seller obtains control only after the transfer. In principle, control must be tested at the time of the sale. Nevertheless, depending on the sequence and overall structure of the transaction, the tax authorities may seek to apply the general anti-abuse provision in Article 344 of the Belgian Income Tax Code 1992 if control is obtained after the sale.

A reinvestment should therefore be examined as an integrated part of the transaction. Relevant factors include not only the percentage reinvested, but also the timing of the reinvestment, representation on the governing body, reserved matters, veto rights and the broader arrangements between the shareholders.

3.3. Management buy-ins

The internal capital gains regime may also affect management buy-in structures.

For example, an existing shareholder and members of management may incorporate a new holding company. Management contributes cash, while the existing shareholder contributes part of the shares in the target company and sells the remaining shares to the new holding company. If the existing shareholder retains control over the holding company, the capital gain realised on the sale may qualify as an internal capital gain and be taxed at 33%. If,

[5] Article 90, first paragraph, 9°, a), Belgian Income Tax Code 1992.

by contrast, management and the existing shareholder(s) obtain control over the holding company together, the capital gains tax will not be due in so far that the management and the existing shareholder(s) are not family members up to and including the second degree.

3.4. Transfers to the next generation

A transfer of a family business by parents to their children does not, in principle, fall within the regime of internal capital gains when the shares are transferred exclusively to the descendants and the parents no longer hold an interest in the company after the transfer. In that case, the transferor no longer exercises control "alone or together with close family members".[6]

If, however, the parents remain shareholders of the company after the transfer, there may be control "together with close family members", in which case the internal capital gains rules may apply, and the realized capital gain may be taxable.

The precise interpretation remains important, particularly where the parents retain governance rights or where a receivable arising from the sale is subsequently transferred to the children. The tax authorities may potentially invoke the anti-abuse provision in Article 344 of the Belgian Income Tax Code 1992 in this respect.

3.5. Contribution of shares as an alternative

Instead of selling shares to a controlled entity, a shareholder may consider contributing them. The contribution itself is exempt. Capital gains tax will, however, become due upon a subsequent disposal of the shares received in exchange, taking into account the original acquisition value before the contribution. The tax is therefore deferred, not eliminated.

Depending on the commercial and company-law objectives, a combination of a sale and a contribution may also be considered. Another option is to organise the reinvestment at a higher level, for example in a top holding company rather than directly in the acquisition vehicle. These alternatives require a transaction-specific assessment, including in light of the general anti-abuse provision in Article 344 of the Belgian Income Tax Code 1992.

4. Substantial shareholdings

A separate regime applies where the taxpayer directly owns at least 20% of the shares in a company.[7] In principle, the threshold is assessed solely at the level of the shareholder in whose name the shares are registeres. Exceptions nevertheless exist under matrimonial property law.

Where shares forming part of the community property are registered in the names of both spouses, Article 127, 4° of the Belgian Income Tax Code 1992 must be taken into account for capital gains tax purposes. A joint participation of at least 40% is then required for the substantial shareholding regime to apply, meaning at least 20% for each spouse.

Where the shares form part of the community property but are registered in the name of only one spouse, the 20% participation condition is assessed solely in respect of the spouse in whose name the shares are registered, although the economic value of the shares belongs to the marital community.

A basic exemption of EUR 1 million applies over a five-year period. Above that exemption, the law provides for the following progressive rates[8]:

[6] Such a transfer may nevertheless fall under the substantial shareholding regime where the transferor holds more than 20% in the transferred company (see *infra*).
[7] Article 90, first paragraph, 9°, b), Belgian Income Tax Code 1992.
[8] Article 171, 4°f, Belgian Income Tax Code 1992.

- From EUR 1 million to EUR 2.5 million: 1.25%;
- From EUR 2.5 million to EUR 5 million: 2.5%;
- From EUR 5 million to EUR 10 million: 5%;
- Above EUR 10 million: 10%.

The exemption of up to EUR 1 million in capital gains is assessed over five consecutive taxable periods. Exemptions already applied during the four preceding taxable periods reduce the amount still available. Once an earlier exemption falls outside the five-taxable-period window, that portion becomes available again. For a shortened taxable period, the maximum amount is reduced pro rata.

Example: a taxpayer realises a capital gain of EUR 500,000 in each of years X, X+1 and X+2. In years X and X+1, the taxpayer may exempt EUR 500,000 each year, fully using the EUR 1 million exemption. No exemption can therefore be applied in year X+2. In year X+5, EUR 500,000 becomes available again because the exemption used in year X has fallen outside the five-taxable-period window.

5. General regime for other financial assets

Capital gains that do not fall within the internal capital gains regime or the substantial shareholding regime are, in principle, taxable at 10%.[9] The scope is broad and includes, among other things[10]:

- Shares and bonds;
- Money market instruments;
- Units in collective investment undertakings;
- Options, futures and swaps;
- Exchange-traded funds (ETFs);
- Insurance and capitalisation products;
- Crypto-assets;
- Currencies; and
- Investment gold.

A basic exemption of EUR 10,000 applies and is indexed annually.[11] If unused, it may increase by EUR 1,000 per year over five years, up to a maximum of EUR 15,000.[12] Specific exemptions are provided for certain supplementary pension products, group insurance policies and life insurance products under the long-term savings regime.[13]

In principle, capital gains tax is withheld at source, even where the realised capital gain falls within the applicable basic exemption.[14] The taxpayer may subsequently reclaim the excess tax withheld through the personal income tax return.

The taxpayer may, however, opt for the "opt-out" system, under which the financial intermediary does not withhold tax at source and the taxpayer reports the capital gain personally.[15] This avoids having to pre-finance tax on a capital gain that is ultimately covered in whole or in part by the basic exemption.

[9] Article 269, §1, 5°, and Article 171, 1°g, Belgian Income Tax Code 1992.
[10] Article 92, Belgian Income Tax Code 1992.
[11] Article 96/2, first paragraph, 1°, and Article 178, §3, 8°, Belgian Income Tax Code 1992.
[12] Article 96/2, 2°, Belgian Income Tax Code 1992.
[13] Article 92, §2, Belgian Income Tax Code 1992.
[14] Article 261, first paragraph, 5°, Belgian Income Tax Code 1992 determines which financial intermediary is required to withhold the tax.
[15] Article 265/1 and Article 300, §1, 4°, Belgian Income Tax Code 1992.

6. Taxable transactions and exemptions

The tax applies to capital gains realised on transfers for consideration outside a professional activity and within the normal management of private assets. Gifts, transfers upon death, divisions of co-owned property and contributions to matrimonial property are, in principle, exempt, although in some cases only temporarily.[16]

A gift is exempt at the time it is made. Upon a later sale of the financial assets by the beneficiary, however, the donor's original acquisition value is used to calculate the capital gains tax. Economically, this is a "roll-over". The capital gains tax ultimately due is the same as if the donor, as predecessor in title, had sold the financial assets personally.

Where the termination of co-ownership occurs within three years as a result of a death, a divorce, the end of legal cohabitation or the end of de facto cohabitation, the capital gains on financial assets realised in that context are exempt from capital gains tax. This is not a general exemption for every division or termination of co-ownership, but a specific exemption expressly linked to those four events and in compliance with the three-year period.

In the event of death, a distinction must be made between the transfer of the financial assets as a result of the death itself and their subsequent division among the heirs. A transfer of ownership by intestate succession, contractual appointment of an heir or will does not in itself constitute a transfer for consideration and therefore does not result in a taxable capital gain. If the resulting co-ownership is subsequently terminated within three years of the death, that termination may also take place without an immediate capital gains tax charge under the specific exemption.

A similar arrangement applies in the event of divorce. This refers to the dissolution of the community resulting from the matrimonial property regime, including the statutory regime, a contractual community regime, universal community and a separation-of-property regime with a limited or deferred community. Where the dissolution gives rise to a termination of co-ownership, the related capital gain may qualify for the exemption, provided that the termination occurs within three years after the divorce. The same arrangement applies upon the termination of legal cohabitation and even upon the end of de facto cohabitation.

The exemption does not, however, constitute a final tax settlement of the latent capital gain. The original acquisition value is carried forward. Accordingly, where financial assets obtained through an exempt termination of co-ownership are later sold for consideration, the original acquisition value must again be used. As with gifts, a roll-over therefore applies.

The contribution of financial assets to matrimonial community property must also be distinguished from the foregoing. According to the administrative circular 2026/C/74, such a contribution is not regarded as a transfer for consideration and therefore does not in itself realise a taxable capital gain. If a transfer for consideration subsequently occurs upon dissolution of the matrimonial community in the context of a termination of co-ownership, the specific exemption may apply.

Partnerships, and in particular related contributions and terminations of co-ownership, are subject to a specific and complex regime that falls outside the scope of this article.

For reorganisations such as mergers and full or partial demergers, Article 96/2, 5° of the Belgian Income Tax Code 1992 provides an exemption for capital gains realised in connection with certain mergers, demergers and share exchanges, provided that the transaction is not mainly motivated by tax fraud or tax avoidance. Here too, the exemption is temporary. Through a roll-over, the original tax acquisition value is carried forward, so that the capital gain is ultimately taxed in the same amount as if the merger had not taken place.

Finally, certain events are nevertheless treated as transfers for consideration and therefore fall within the scope of the capital gains tax, including:

[16] Article 95, Belgian Income Tax Code 1992.

- Payments of capital and surrender values during the policyholder's lifetime under life insurance or capitalisation contracts; and
- A transfer of tax residence or the location of assets abroad, which may give rise to an exit tax on unrealised capital gains.[17]

7. Calculation of the taxable capital gain

7.1. Basic principle

Article 102, §6 of the Belgian Income Tax Code 1992 governs the taxable base. In general, it is the positive difference between the consideration received for the financial asset and its acquisition value.[18] The purpose is to tax capital gains accrued after 31 December 2025, rather than historical capital gains accrued before that date.

For assets acquired before 1 January 2026, the regime therefore uses a valuation as at 31 December 2025 as a snapshot. The applicable acquisition value depends on the nature of the asset and the circumstances in which it was acquired.[19]

7.2. Assets acquired through share option or incentive schemes

For shares acquired through options falling within the Belgian Stock Option Act of 1999, the acquisition value equals the value of the shares when the options are exercised. For the options themselves, the relevant basis is the market value at the time the options became exercisable. Shares acquired at a reduced price are valued at the time of acquisition.

These rules mean that a disposal shortly after an option is exercised, or shortly after an option becomes transferable, should in principle result in little or no taxable capital gain if the disposal value corresponds to the relevant acquisition value.

Example: assume that in 2026 you receive an option allowing you to acquire a share for EUR 10. When you exercise the option in 2033, the share is worth EUR 23. You therefore pay EUR 10 and receive a share worth EUR 23. The difference of EUR 13 is not subject to the new capital gains tax. Upon a subsequent sale, the acquisition value of the share for capital gains tax purposes is the market value when the option was exercised, namely EUR 23, rather than the exercise price of EUR 10.

7.3. Unlisted financial assets

For unlisted financial assets acquired before 1 January 2026, the value as at 31 December 2025 may be determined using several methods. The highest eligible value among the following four values is retained:

- The value used in an arm's-length transfer, an incorporation or a capital increase in 2025;
- A valuation formula in an agreement or contractual put option in force on 1 January 2026;
- The company's equity increased by four times EBITDA; or

[17] Articles 90/1, 92, §2, 2°, and 413/1, Belgian Income Tax Code 1992. When tax residence is transferred abroad, the taxpayer is deemed to have transferred the financial assets for consideration, so that latent capital gains are in principle subject to exit tax. Payment is deferred automatically for emigration to the EU/EEA or a qualifying treaty state; for other countries, deferral must be requested and is subject to additional conditions. If the assets are transferred within 24 months, the deferred tax may become payable. If they are not transferred and the taxpayer remains resident abroad for more than 24 months, or returns to Belgium within that period, the payment obligation lapses definitively.

[18] Excluding costs incurred, such as for example brokerage fees and stock exchange tax.

[19] Article 102, §1, Belgian Income Tax Code 1992.

- An independent valuation carried out before 31 December 2027 by a statutory auditor or certified accountant who is not the company's regular adviser.[20]

In exceptional circumstances, the tax authorities may challenge an independent valuation, for example where there are indications that it does not reflect market conditions. Accurate and contemporaneous valuation documentation is therefore essential.

Companies have until 31 December 2027 to arrange for this valuation. It is therefore important that the valuation be carried out carefully and on time. Without a timely valuation, there is a risk that the outcome will be disadvantageous to the taxpayer.

For listed financial assets, the acquisition value of assets acquired before 2026 is based on the closing price on 31 December 2025.

7.4. FIFO, historical acquisition price and capital losses

For staggered acquisitions, the taxable base is calculated using the FIFO method.[21] The acquisition value of the financial assets acquired first is allocated first to the assets sold.

This calculation method is disadvantageous for a passive buy-and-hold investor.[22] When an investor sells part of a position, the financial assets acquired first are used to calculate the taxable base. These assets will generally have a lower acquisition price than assets acquired later. As a result, the taxable base is higher than it would be under a weighted-average method. Where the entire position is sold, however, the FIFO method and the weighted-average method produce the same taxable base.

A passive buy-and-hold investor who sells after a long period will also generally realise a substantial capital gain, resulting in a high capital gains tax charge.[23] To mitigate this, the taxpayer may consider selling the position annually to make optimum use of the EUR 10,000 basic exemption and repurchasing the same position after several days or weeks. This preserves the benefit of compound returns as well as the basic exemption.

The disadvantage of this method is the transaction costs that would otherwise not be incurred. In principle, however, these will be considerably lower than the 10% capital gains tax itself. The transaction must also withstand scrutiny under the general anti-abuse provision in Article 344 of the Belgian Income Tax Code 1992. At the time of writing, it is unclear to what extent the tax authorities would invoke that provision regarding these acts.

For financial assets acquired before 1 January 2026, the value as at 31 December 2025 is the reference value for calculating a capital gain or loss. For transfers up to and including 31 December 2030, however, the taxpayer may, upon request and subject to evidence, use the actual historical acquisition value to calculate the capital gain. If that acquisition value is higher than the value as at 31 December 2025, the taxable capital gain may be reduced or eliminated. From 1 January 2031, the historical acquisition value may no longer be used for assets acquired before 2026, and the capital gain will be calculated by reference to the value as at 31 December 2025.

Capital losses may be offset only if they are realised by the same taxpayer, within the same taxable period and within the same category of financial assets. For assets acquired before 1 January 2026, a capital loss is determined

[20] Article 102, §3, Belgian Income Tax Code 1992.
[21] Article 102, §2, Belgian Income Tax Code 1992.
[22] A passive buy-and-hold investor invests mainly passively and in a diversified manner with a long-term perspective, for example by investing a fixed amount in an ETF each month and holding the position for decades.
[23] If EUR 500 is invested each month in the S&P 500 for 40 years at an average annual return of 8% (without taking into consideration inflation), the total amount contributed is EUR 240,000. Through compound interest, the investment grows to approximately EUR 1,610,540, representing a capital gain of approximately EUR 1,370,540 (without taking into consideration transaction costs and fixed costs). The capital gains tax would then amount to EUR 136,054 (!).

exclusively by reference to the value as of 31 December 2025. A decrease in value that arose before that date therefore does not constitute a tax-deductible capital loss.[24]

8. When is capital gain realized?

The taxable event is, in principle, the realisation of a capital gain following a transfer for consideration of financial assets.[25] This is particularly relevant in an M&A context. According to the tax authorities, a capital gain is realised as soon as the financial asset has left the taxpayer's estate as a result of the transfer for consideration and has been replaced by consideration. Actual payment of the price is not decisive.

If the shares are sold on 1 March 2027 for a fixed price of EUR 1,000,000 and their acquisition value is EUR 400,000, a capital gain of EUR 600,000 is realised. The fact that the purchaser pays EUR 500,000 immediately and the remaining EUR 500,000 only two years later does not change this. The full capital gain of EUR 600,000 is taxable on 1 March 2027 because the price is already fixed at that time.

An earn-out arrangement is different. Earn-outs are often structured through a condition precedent linked to an uncertain future event, with part of the purchase price depending on the future performance of the acquired company. The relevant condition may be financial, such as achieving a certain level of revenue or EBITDA, or non-financial, such as the seller remaining active in the business or the company obtaining a particular licence. The taxable event occurs only when the uncertain event takes place.

For example, if the purchaser pays EUR 500,000 on 1 March 2027 and an additional payment of EUR 500,000 is conditional upon EBITDA exceeding EUR 2 million two years later, only EUR 100,000 is taxable on 1 March 2027. If the EBITDA condition is satisfied two years later, the additional consideration of EUR 500,000 becomes taxable at that later time.

10. Reporting obligations

No withholding tax is withheld on internal capital gains or capital gains on substantial shareholding. The taxpayer must therefore report the realised capital gain personally. In addition, Article 326bis of the Belgian Income Tax Code 1992 imposes a separate reporting obligation on intermediaries that design, market or organise the transaction or manage its implementation.[26] Merely supporting activities fall outside this obligation. In essence, the intermediary reports the price received and the identification details of the purchaser and seller, no later than the end of February of the year following execution of the transaction. This prevents the taxpayer from not reporting the internal capital gains or capital gains on substantial shareholding and by consequence not paying any capital gains tax.

Where several intermediaries are subject to a reporting obligation, duplicate reporting may be avoided if it is demonstrated that another intermediary has already reported the same information. Lawyers are not, however, required to share that information with the other people involved because of legal professional confidentiality.

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[24] Article 102, §4, Belgian Income Tax Code 1992.
[25] Article 90, first paragraph, 9°, Belgian Income Tax Code 1992.
[26] Provided that at least one of the following additional conditions is met for the obligation in question to apply:
1° be a tax resident of Belgium;
2° have a permanent establishment in Belgium through which the services relating to the transactions referred to in paragraph 1 are provided;
3° be incorporated in Belgium or be subject to Belgian law;
4° be registered with a professional body in connection with the provision of legal, tax or advisory services in Belgium.

11. Practical impact on business transfers

The capital gains tax adds a new layer to the tax analysis of Belgian share transfers. Its impact is not determined solely by the sale price or the percentage of shares sold. Governance arrangements, timing, valuation methodology and the transaction's payment structure may be equally important.

In particular, the following points should be examined before the transfer:

- Whether the seller will retain or obtain control over the purchaser or acquisition vehicle;
- Whether minority protections or veto rights may result in joint control;
- Whether family members participate in the acquisition structure;
- Whether the seller reinvests directly in the acquisition vehicle or at another level;
- Whether a contribution, a sale or a combination of both is being considered;
- Whether the seller holds a substantial shareholding of at least 20%;
- In case shareholders are married, what is their matrimonial property regime and in case of a community, in whose name the shares are registered;
- How the value of the shares as at 31 December 2025 is substantiated;
- Whether the purchase price includes deferred, conditional or earn-out elements;
- Whether a disposal is spread over different taxable periods; and
- Which party must comply with the applicable withholding and reporting obligations.

The shareholders' agreement deserves particular attention where the seller retains an economic interest after closing. Even a relatively limited reinvestment may be relevant if accompanied by decisive governance rights. Conversely, the mere fact that a seller retains a minority interest does not automatically establish control. The entire contractual and factual governance structure must be assessed against the control criteria in the Belgian Code of Companies and Associations.

Conclusion

The new capital gains tax fundamentally changes the tax framework for privately held share interests and financial investments. Although the general rate is 10%, a substantial shareholding of 20% or more may fall under a progressive regime, while a sale to a controlled entity may be taxed as an internal capital gain at 33%. The distinction between these regimes may materially affect the structuring of an M&A transaction.

For entrepreneurs and investors, the main challenge lies not only in determining the applicable rate, but also in establishing control, substantiating the acquisition value, analysing reinvestments and correctly characterising deferred or conditional consideration. A transaction-specific assessment before signing is therefore advisable, particularly where the seller remains involved in the acquisition structure or the purchase price includes an earn-out.